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## **Stored value facility Regulation in Singapore according to the New Payment Services Act**

**Singapurskie rozporządzenie dotyczące instrumentów przechowywania wartości (*Stored Value Facilities – SVF*) według nowej ustawy o usługach płatniczych**

**Abstract.** The purpose of this work is to provide an overview of amended payment regulation in Singapore, coming into effect in 2020 and to analyse the changes and their possible effects. It describes how the former stored value facility became popular owing to its non-licensed institutions with pre-set limits, frequently misused for payment purposes it was not designed for. The new regulation, based on the Payment Services Act, divided licence categories into 7 different types: this work specifies in more detail. Thus, greater transparency is achieved and preventive measures undertaken against any misuse of the existing Singaporean payment regulation.

**Keywords:** Stored value facility; MAS; e-money; Payment Services Act; AML/CFT.

**Streszczenie.** Celem niniejszej pracy jest dokonanie przeglądu zmienionego rozporządzenia w sprawie usług płatniczych w Singapurze, które wejdzie w życie w 2020 r. oraz analiza zmian i ich możliwych skutków. W artykule opisano, w jaki sposób uprzednio stosowane instrumenty przechowywania wartości (*stored value facilities*) stały się popularne z uwagi na brak licencji dla instrumentów z wcześniej ustalonymi limitami, które niejednokrotnie niewłaściwie wykorzystywano do celów płatniczych, do których nie były przeznaczone. Nowa regulacja, oparta na ustawie o usługach płatniczych, podzieliła kategorie licencji na 7 różnych typów: niniejszy artykuł omawia je szczegółowo. Pozwoliło to osiągnąć większą przejrzystość oraz podjąć środki

zapobiegawcze przeciwko wszelkim nadużyciom istniejącego singapurskiego rozporządzenia w sprawie usług płatniczych.

**Słowa kluczowe:** instrumenty przechowywania wartości; MAS; e-pieniądze; ustawa o usługach płatniczych; AML/CFT.

## 1. Introduction

The Singaporean “stored value facility”<sup>1</sup> (hereinafter referred to only as the “SVF”) has become a very popular legal institution in the payments industry thanks to various factors, including also the pro-business legal environment of Singapore. As it provided a very simple form of institution, based on the possibility of not being licensed and still allowing a certain volume of transactions to be executed, numerous investors from all around the world established their own SVF vehicle there.

So, what is this SVF? According to the Monetary Authority of Singapore (hereinafter referred to only as the “MAS”), SVF represents a facility used for the payment of goods or services up to the value stored under such vehicle. The user needs to purchase a stored value under the SVF while he/she pays in advance to the stored value holder. Only then may the user purchase goods or services from merchants, accepting the stored value of SVF as a payment<sup>2</sup>.

SVF was facing a competitive licensed institution in Hong Kong. This institution was supervised by the Hong Kong Monetary Authority (hereinafter referred to only as the “HKMA”). It used instruments like e-wallets and prepaid cards<sup>3</sup>, whose details and respective regulation I will describe later in the following chapter.

The objective of this article is to provide a closer definition and specification of a new payment regulation, replacing the former SVF one, still remaining one of the most popular institutions and jurisdictions industry in the world for the payments. Additionally, I will define the basic legal requirements for licensed subjects, so the reader can have an overview of what is needed to establish a new institution under the new regulation.

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<sup>1</sup> In general, it could be explained also as an institution for electronic money.

<sup>2</sup> *Stored Value Facility Guidelines*, MAS, Singapore, 2019, [https://www.mas.gov.sg/-/media/MAS/resource/publications/consult\\_papers/2006/Consultation-Paper-on-Stored-Value-Facility-Guidelines-final.pdf](https://www.mas.gov.sg/-/media/MAS/resource/publications/consult_papers/2006/Consultation-Paper-on-Stored-Value-Facility-Guidelines-final.pdf) (access on-line: 16.04.2020).

<sup>3</sup> *Stored Value Facilities and Retail Payment Systems*, HKMA, Singapore, 2019, <https://www.hkma.gov.hk/eng/key-functions/international-financial-centre/stored-value-facilities-and-retail-payment-systems/> (access on-line: 16.04.2020).

My hypothesis is that the new form of licensed SVF analogy brings a more functional model of payment institution in comparison to the previous non-licensed one<sup>4</sup>, while still ensuring significant transparency and the possibility to observe anti-money laundering legal rules.

Within this article, I will apply a descriptive method, a method of induction, and a method of deduction with a more significant application of comparison of sources, and with an interest in the definition of basic outcomes for the practical part. I will apply the methods analysis and synthesis as well.

## **2. New payments regulation in Singapore**

The new Payment Services Act (hereinafter referred to only as the “PSA”) was adopted by Singapore on 22 February 2019<sup>5</sup>. Based on the fact that Singapore remains one of the main global financial and commercial hubs with fintech activity expanding, having its authorities prepared for issuing different guidelines, this act, taking into account the number of affected institutions, was set to come into effect on 28 January 2020.<sup>6</sup> By the new PSA, coming into effect, the former SVF form was changed radically. The previous act, the Payment Systems (Oversight) Act (hereinafter referred to only as the “PSOA”)<sup>7</sup>, regulated only the simplified legal form with the basic differentiation of SVF to (1) an SVF without mandatory approval by the supervisory authority (MAS) and to (2) and SVF with mandatory approval. As the main differentiating point, we can see Article 33(1b), where it is defined that any SVF whose cumulative volume of issued electronic money (or so-called stored value)<sup>8</sup> exceeds the value of SGD 30 million<sup>9</sup>, must inform MAS about such fact without delay. From that moment, the SVF becomes subject to mandatory supervision<sup>10</sup>.

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<sup>4</sup> According to the former PSOA, SVF institution was not obliged to apply for a licence by the limit of SGD 30 million.

<sup>5</sup> Act of 14 January, 2019, the Payment Services Act, [Singapore Statutes Online], Cap 7 of 2019, with subsequent amendments hereinafter: <https://sso.agc.gov.sg/Acts-Supp/2-2019/Published/20190220?DocDate=20190220> (access on-line: 16.04.2020).

<sup>6</sup> International Monetary Fund, Singapore: Financial System Stability Assessment, Washington, D.C., 2019, p. 33.

<sup>7</sup> Act of 23 June, 2006, the Payment Systems (Oversight) Act, [Singapore Statutes Online], Cap 222A of 2006, with subsequent amendments hereinafter: <https://sso.agc.gov.sg/Act/PSOA2006> (access on-line: 16.04.2020).

<sup>8</sup> S.K. Teo, *Development in Singapore law between 2001 and 2005: Singapore Academy of Law Conference 2006*, Ann Arbor, 2006, p. 228.

<sup>9</sup> So around EUR 19.95 million.

<sup>10</sup> *New risk-based licensing regime promotes growth and agility for Singapore’s payment service providers*, PWC, Singapore, 2019, <https://www.pwclegal.com.sg/assets/docs/the-payment-services-act-2019.pdf> (access on-line: 16.04.2020).

Such regulated and supervised SVF is known as the widely accepted SVF (hereinafter referred to only as the “WA SVF”), becoming a so-called approved holder with a bank account approved<sup>11</sup> as well<sup>12</sup>, fully liable for such stored value<sup>13</sup> to MAS.<sup>14</sup> Here, we see that the legislative body decided to provide some free space to entities operating in Singapore and conducting business to use this vehicle for the purpose of their payments. However, if they decide to process a significant amount of funds, in particular handling the funds of third parties, there is the need of supervision for the purpose of protecting such third parties owing to the potential damage caused to them by any wrongdoing in relation to such funds.

What if the SVF did not meet these requirements? Naturally, the PSOA act did not forget about the power to enforce the obligations under this act. By not meeting the obligation to apply for a licence, SVF could face the risk of a one-time penalty up to the amount of 150,000 SGD, while in the case of ignoring the penalty, and also for the case of repetitive or persisting breach of obligation, SVF could face a penalty of up to SGD 15,000 for each day of such breach, in addition to the one-time penalty<sup>15</sup>.

### **3. Comparison to the former regulation in the PSOA**

In spite of the new regulation stated in the PSA, the original PSOA did not set any mandatory minimum capital<sup>16</sup>. Certainly, it was one of the aspects that brought significant popularity to this form, luring investors from various countries to set up this institution for their own purposes so they could execute the activities of payment institutions.

In practice, it allowed them to perform transfers below the limit of SGD 30 million of issued e-money (or prepaid value on cards). However, what was often neglected and many investors were not aware of, is the fact that, following Article 33(1) of the PSOA, this limit was not related to the sole SVF institution only, but to any other affiliated entity such SVF institution had control of. This means that the limit was applied to the entire holding structure and all such

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<sup>11</sup> Approved by the MAS

<sup>12</sup> Article 34(2) of the PSOA.

<sup>13</sup> *Stored Value Facilities (SVF)*, MAS, Singapore, 2019, <https://www.mas.gov.sg/regulation/payments/stored-value-facilities> (access on-line: 16.04.2020).

<sup>14</sup> At the time of writing this article, there were only 6 companies in Singapore, having the WA SVF status: “Merchant Stored Value Account,” “Xfers Wallet,” “EZ-Link Card”, “NETS CashCard”, “NETS FlashPay”, “CapitaVoucher”.

<sup>15</sup> Article 33(4) of the PSOA.

<sup>16</sup> So-called minimum capital requirements.

entities had to keep that volume of issued “stored value” (that is e-money or prepaid cards) below this limit as, otherwise, a specific MAS approval would be required.<sup>17</sup> In practice, if the entities came closer to the limit of SGD 30 million, they simply requested their clients (or any individuals or entities they issued stored value for) to transfer a certain amount to any other payment institution<sup>18</sup>, thus avoiding the mandatory application for licensing under the MAS and continued in their business activities in the original, non-licensed form of standard business company. Such so-called “non-widely accepted” SVFs (SVFs not intended to be used for the general public) did not need to have their bank approved, nor did they need any other approval from the MAS<sup>19</sup>, just from the ACRA during the establishment of the company for the purpose of business registry.

As we can see in the Consulting Paper, which was issued on 22 June 2006, the primary goal of the SVF was not the conduct of business in the area of payment institution, as the legislative body in Singapore follows the standard legal requirements for subjects providing services in payments for wide public.<sup>20</sup> Originally, SVFs were designed to become vehicles used for the purpose of prepaid cards,<sup>21</sup> like SIM cards, for mass transit companies and their tickets etc<sup>22</sup>.

However, as the system, implemented in 2006, could easily be misused in the above-mentioned form, we can see an unwanted development of the market in Singapore, forming a so-called grey banking or payments zone. Therefore, SVFs found the gap in the legislation, expecting a licence for the activities of provision of payment services to third parties for the purpose of making money on transaction fees primarily. The most popular was the so-called “remittance” licence, allowing both deposits and withdrawals, now included in the possibility of issuing e-money, and their subsequent acceptance and repayment in Singaporean dollars.

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<sup>17</sup> R. Bollen, *The Law and Regulation of Payment Services: A Comparative Study*, Alphen aan den Rijn, 2012, p. 216.

<sup>18</sup> Naturally, to an institution that had no connection to the holding of respective SVF institution, so it could keep the value of issued e-money below the limit of SGD 30 million within its holding structure.

<sup>19</sup> A.J. Tan, *Regulatory Challenges of Electronic Payment Systems and Electronic Money*, Singapore, 2019, <https://www.joylaw.com/content/06-news/30-regulatory-challenges-of-e-payment-systems-and-e-money/regulatory-challenges-of-e-payment-systems-and-e-money-081215.pdf> (access on-line: 16.04.2020).

<sup>20</sup> H.W. Byrnes, J.R. Munro, *Money Laundering, Asset Forfeiture and Recovery and Compliance – A Global Guide*, Texas 2020.

<sup>21</sup> *Response to feedback received – Consultation on the draft regulations pursuant to Payment Systems (Oversight) Act 2006 and draft stored value facility guidelines*, MAS, Singapore, 2019, [https://www.mas.gov.sg/-/media/MAS/resource/publications/consult\\_papers/2006/Response-to-Feedback-on-Draft-Regulations-and-SVF-Guidelines.pdf](https://www.mas.gov.sg/-/media/MAS/resource/publications/consult_papers/2006/Response-to-Feedback-on-Draft-Regulations-and-SVF-Guidelines.pdf) (access on-line: 16.04.2020).

<sup>22</sup> M. Tan, *E-payment: The Digital Exchange*, Singapore 2004, p. 11.

#### 4. New licence conditions

Based on the experiences of Singaporean authorities with the original SVF institutions and as a consequence of massive utilisation of SVFs for other purposes than those SVFs were designed for, the regulation of this legal form has been reassessed and the PSA act from 2019 (coming into effect on 28 January 2020) brought a completely new system of licences, thus replacing the former regulation under the PSOA and the Money-Changing and Remittance Businesses Act (Cap. 187, hereinafter referred to only as the “MCRBA”)<sup>23</sup>.

Thus, changing the entire legal framework of the original acts, and bringing an end to the original system of WA SVFs and non-licensed SVFs, the PSA specifies the following 7 licences for payment services:

1. Account issuance,
2. Domestic money transfer,
3. Cross border money transfer,
4. Merchant acquisition,
5. E-money issuance,
6. Digital payment token,
7. Money-changing<sup>24</sup>.

Now, the PSA has unified the original licences and non-licensed SVF institutions into one act and avoided any evasion of licensing by covering the real business activities under permitted conduct of business.

The entire licensing system (of 7 licences) is divided into three basic categories, as follows:

1. Standard payment institution licence (hereinafter referred to only as the “SPI”),
2. Major payment institution licence (hereinafter referred to only as the “MPI”),
3. Money-changing licence<sup>25</sup> (hereinafter referred to only as the “MCL”)<sup>26</sup>.

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<sup>23</sup> L. Low, *MAS seeks feedback on notices and guidelines to be issued under Payment Services Act 2019*, Singapore, 2019, <https://www.allenandgledhill.com/sg/publication/articles/12347/mas-seeks-feedback-on-notices-and-guidelines-to-be-issued-under-payment-services-act-2019> (access on-line: 16.04.2020).

<sup>24</sup> Article 6(4a) and (4b) of the PSA.

<sup>25</sup> The last activity – money-changing licence – represents the incorporation of the MCRBA into the unified PSA

<sup>26</sup> Dentons Rodyk, *The Payment Services Act and how it affects FinTech in Singapore*, Singapore, 2019, <https://dentons.rodyk.com/en/insights/alerts/2019/may/27/the-payment-services-act-and-how-it-affects-fintech-in-singapore> (access on-line: 16.04.2020).

The basic distinguishing aspect of these three licensing groups is their nature of business conduct and pre-set limit. MCL represents a simple area of activities related purely to the exchange of money, therefore, any cash exchange business model must apply for this licence.

SPI is related to a wider spectrum of payment services, whose limits are specified in the PSA. From a legal point of view, the important change is the reduction of the limit of the original cumulative SGD 30 million (for the entire group of companies of SVF) to an actual average value limit of SGD 3 million for any payment service per month. In a case (and in practice, it is to be expected) in which the entity applies for two or more services, the limit is increased to the value of SGD 6 million per month (again an average value per month)<sup>27</sup>. It is evident that the MAS did not support the former system of cumulative limitation of payment instruments based on the practice stated above, and therefore, a new system of assessment on the basis of average value per month was adopted at a markedly lower value of 10% in comparison with the total value stated in the PSOA.

Nevertheless, as stated in Article 6(5b), a licensed entity must apply for the MPI (that is the third category of licences and the highest one) in the event of meeting of any alternative options, so provided that the entity is intending to:

(a) provide the services of account issuance for e-money and if the average value of e-money exceeds SGD 5 million on any day and (1) is stored in any account of a Singaporean resident issued by the licensee, or (2) stored in any account issued by the licensee to any non-Singaporean resident while in this case also e-money needs to be issued in Singapore;

(b) provide the services of e-money issuance and the average total value of any “specified”<sup>28</sup> issued e-money reaches SGD 5 million a day,

(c) or if any limiting values, stated above, of SGD 3 (per a single licensed service) a 6 (per two and more licensed services) million is exceeded in any month over the calendar year<sup>29</sup>.

What does it mean in simple words? Any entity that exceeds the limits (SGD 3 million or SGD 6 million) in certain calendar months, set in Article 6(5a)(i) and (ii), does not need to face

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<sup>27</sup> Article 6(5)(a)(ii) (A) and (B).

<sup>28</sup> Under this category, the definition of “specified e-money” means any e-money issued to any person, such e-money issuer determined as a resident of Singapore, or resident outside of Singapore; see the definition of “specified e-money” in the PSA.

<sup>29</sup> Article 6(5) PSA.

the obligation to apply for an MPI licence at the MAS automatically, as these limits are set on the basis of an average monthly value per calendar year. As in the definition of the PSA, the “calendar year” is defined as a “period from 1 January to 31 December (incl. both days)”, and the Article 6(5) uses this term, the question of whether such average is calculated on the basis of a strict calendar year or on the basis of moving 12 months, is thus solved.

However, there is another question arising in connection with existing entities. As many SVFs already conduct their activities on the basis of the PSOA, they will be allowed to conduct their activities within a transitory period of time based on the former regulation. Grounds for this continuation can be found in the Article 121 of the PSA “Saving and Transitional Provisions.”

If the entity existed as an SVF under the PSOA, not having a licence for money-changing activities, nor the “remittance licence,” it would be considered as an MPI with a licensed service of e-money issuer. If such an entity had the remittance licence, it would be considered as a holder of an e-money licence as well as a holder of a cross-border payments licence at the same time. If such an entity was granted even a money changing licence, it would be considered as an entity holding a money changing licence as well as an e-money licence.

The question remains as to what is the exact date relevant for the initiation of calculation of a daily average limit per month of a calendar year for such entities. Is it the first day of a calendar year, or is it calculated (more probably) from the date such SPI licence was granted? MAS has not provided any guideline to this question and by the day of preparation of this article I had not received any response to my enquiries. Nevertheless, different interpretations could end also in an adverse limitation of existing companies, active under the PSOA at the moment.

The transition period, during which such entities are exempted from the obligation to be granted an SPI or MPI licence, will last for 12 months after the decisive day<sup>30</sup>, on the basis of definition of a decisive day in Article 121 of the PSA with reference to Article 108 of the PSA, stating the repealed status of the PSOA and the MCRBA.

It is also worth mentioning that, in comparison with banks (under Article 2 of the “Banking Act”<sup>31</sup>) or with other financial institutions (under Article 2 of the “Finance Companies Act”<sup>32</sup>),

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<sup>30</sup> So-called “appointed day” in the act.

<sup>31</sup> Act of 31 March, 2008, the Banking Act, [Singapore Statutes Online], Cap 19 of 2020, with subsequent amendments hereinafter: <https://sso.agc.gov.sg/Act/BA1970>.

<sup>32</sup> Act of 15 July, 2011, the Finance Companies Act, [Singapore Statutes Online], Cap 108 of 2020, with subsequent amendments hereinafter: <https://sso.agc.gov.sg/Act/FCA1967>.



payment institutions under the PSA may not provide any loans (so none of the 7 licences referred to above allows them to gain the status of a credit institution) or use the funds of customers, nor any interests thereof, for the purpose of performance of their own business activities or for investments in any way. Also, these institutions are prohibited from offering withdrawals in Singaporean dollars from payment accounts, held by Singaporean residents or persons where such institution is not able to determine if the person is, or is not, a resident of Singapore.

Besides the conditions specified earlier, there are also other prerequisites for the entities intending to acquire any of the PSA licences:

1. the entity shall be established in Singapore,
2. the registered seat or permanent establishment must be in Singapore,
3. the executive director of the company is a citizen or resident of Singapore,
4. the licence applicant meets the minimum capital requirements,
5. MAS has confirmed that the applicant is a fit and proper person under the Fit and Proper Guidelines, describing criteria for the assessment of fitness of such person<sup>33</sup> (hereinafter referred to only as the “Guidelines”),
6. the applicant has met operational requirements, set by the MAS,
7. the applicant has provided any information, required by the MAS, and paid a non-refundable fee to the MAS<sup>34</sup>.

The issue of basic requirements which the director must meet under the PSA, was not completely resolved at the time of writing, and only the proposal of the Payment Services Regulations can be seen right now (hereinafter referred to only as the “PSR”).<sup>35</sup> Nevertheless, with reference to Article 6(9) of the PSA, we see that the proposal of the PSR opens a path to a wider definition of directors in Article 7(1), where also a person (besides meeting other requirements), having a work permit issued by Singapore, may be an executive director, however, only under the requirement that one of the directors (as in general, more than a single director is expected in these

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<sup>33</sup> *Guidelines on fit and proper criteria*, MAS, Singapore, 2019, [https://www.mas.gov.sg/-/media/MAS/resource/legislation\\_guidelines/insurance/guidelines/FSG-G01-Guidelines-on-Fit-and-Proper-Criteria.pdf](https://www.mas.gov.sg/-/media/MAS/resource/legislation_guidelines/insurance/guidelines/FSG-G01-Guidelines-on-Fit-and-Proper-Criteria.pdf) (access on-line: 16.04.2020).

<sup>34</sup> Article 6(9) of the PSA.

<sup>35</sup> *Consultation Paper on the Proposed Payment Services Regulations*, MAS, Singapore, 2019, [https://www.mas.gov.sg/-/media/MAS/resource/publications/consult\\_papers/2019/Consultation-on-Proposed-Payment-Services-Regulations-MAS-P0052019.pdf](https://www.mas.gov.sg/-/media/MAS/resource/publications/consult_papers/2019/Consultation-on-Proposed-Payment-Services-Regulations-MAS-P0052019.pdf) (access on-line: 16.04.2020).

institutions) is a citizen of Singapore or has permanent residence in Singapore. Naturally, each of the directors must be approved by the MAS (this obligation could not be found in the previous PSOA regulation) when following Article 34, specifying this obligation, it is specified in Article 12 of the Schedule B, referring to the obligation to submit such application by the use of Form 3. Despite the fact that the PSA and the PSR mention directors, where it is expected that it will be specified more precisely in the final version of the PSR, compliance officers are markedly neglected compared to regulations in other jurisdictions. Neither the regulations stated above nor the Directive specify any detailed conditions for the performance of their job. The most detailed specification may be found in Article 10 of the Guidelines, stating the obligation of institution (SVF in our case) to meet only the following in relation to the anti-money laundering measures (hereinafter referred to only as the “AML/CFT”): “is obliged to implement appropriate policies for hiring, appropriate internal control systems and procedures ensuring adequately that the persons it employs, entitles, or appoints for acting on its behalf in relation to the performance of regulated activities under respective legal rules, meet the fit and proper criteria of this Guidelines<sup>36</sup>.”

Here, we see that the actual regulation has set only the requirements for respective procedures, based on which compliance officers are hired, and systems following the Guidelines.

Nevertheless, in connection with the compliance requirements, it is an interesting fact that up to now, the AML/CFT regulation in Singapore has remained markedly fragmented and the legislative body does not seem to be going to unify it into a single act in the near future. Its system is based on the Corruption, Drug Trafficking and Other Serious Crimes Act (CDSA)<sup>37</sup>, the Organized Crime Act<sup>38</sup>, the Mutual Assistance in Criminal Matters Act<sup>39</sup>, along with a system of various AML/CFT measures, issued by regulatory bodies of Singapore (MAS and respective financial authorities).

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<sup>36</sup> *Guidelines on Fit and Proper criteria*, MAS, Singapore, 2019, [https://www.mas.gov.sg/-/media/MAS/resource/legislation\\_guidelines/insurance/guidelines/Guidelines-on-Fit-and-Proper-Criteria-October-2018-Guideline-No-FSGG01.pdf](https://www.mas.gov.sg/-/media/MAS/resource/legislation_guidelines/insurance/guidelines/Guidelines-on-Fit-and-Proper-Criteria-October-2018-Guideline-No-FSGG01.pdf) (access on-line: 16.04.2020).

<sup>37</sup> Act of 1 July, 2000, the Corruption, Drug Trafficking and Other Serious Crimes Act, [Singapore Statutes Online], Cap 65A of 2020, with subsequent amendments hereinafter: <https://sso.agc.gov.sg/Act/CDTOSCCBA1992> (access on-line: 16.04.2020).

<sup>38</sup> Act of 17 August, 2015, the Organized Crime Act, [Singapore Statutes Online], Cap 27 of 2020, with subsequent amendments hereinafter: <https://sso.agc.gov.sg/Act/OCA2015> (access on-line: 16.04.2020).

<sup>39</sup> Act of 31 December, 2001, the Mutual Assistance in Criminal Matters Act, [Singapore Statutes Online], Cap 190A of 2020, with subsequent amendments hereinafter: <https://sso.agc.gov.sg/Act/MACMA2000> (access on-line: 16.04.2020).

Following my personal query to the MAS<sup>40</sup>, regarding more specific requirements on the post of compliance officer, we received only a response through an authorized agent<sup>41</sup> where the MAS states that compliance officers will be evaluated on the basis of the fit and proper test<sup>42</sup>. Therefore, let us take a closer look at the Fit and Proper Guidelines.

The criteria for considering whether a person is fit and proper for the purpose of compliance with applicable rules, are set out in the Guidelines in Article 8:

1. honesty, integrity and reputation;
2. competence and capability;
3. financial soundness.

The failure by a relevant person to meet any one of the above criteria should not lead to an automatic refusal of an application<sup>43</sup>.

What we cannot forget to mention in relation to licensed subjects in the payments industry and their obligations, is the mandatory reporting to the MAS. We can see the specification of these obligations in Article 17 of the PSA, where there is only a vague description of these obligations, referring to a written specification of the terms, form, manner, and frequency of reporting to the MAS. Based on this, we can conclude that according to the new regulation, SPI and MPI will be obliged to report account statistical data, transaction volumes, values of transactions (in particular owing to AML/CFT), and monthly e-money movements. Within these obligations, there is also information collected about clients representing a higher risk from the AML/CFT point of view, when these obligations are specified in more detail (outside of the AML/CFT act). In particular the Guidelines to Notice PSOA No 2 on the Prevention of Money Laundering and Countering the Financing of Terrorism from 24 April 2015<sup>44</sup>, mainly its Section 13, providing a specification for

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<sup>40</sup> Any questions to the MAS are executed purely through an agent-lawyer with respective authority/certification to provide legal services in Singapore.

<sup>41</sup> Response sent to the MAS through a Singaporean lawyer Jonathan Tan from the law firm Asia Practice LLC.

<sup>42</sup> So-called “Fit and Proper Test”.

<sup>43</sup> *Guidelines on fit and proper criteria*, MAS, Singapore, 2019, [https://www.mas.gov.sg/-/media/MAS/resource/legislation\\_guidelines/insurance/guidelines/Guidelines-on-Fit-and-Proper-Criteria-October-2018-Guideline-No-FSGG01.pdf](https://www.mas.gov.sg/-/media/MAS/resource/legislation_guidelines/insurance/guidelines/Guidelines-on-Fit-and-Proper-Criteria-October-2018-Guideline-No-FSGG01.pdf) (access on-line: 16.04.2020).

<sup>44</sup> *Guidelines to Notice PSOA-N02 on Prevention of Money Laundering and Countering the Financing of Terrorism – Holders of Stored Value Facilities*, MAS, Singapore, 2019, <https://www.mas.gov.sg/regulation/guidelines/guidelines-to-mas-notice-psoa-n02-on-prevention-of-money-laundering-and-countering-the-financing-of-terrorism--holders-of-stored-value-facilities> (access on-line: 16.04.2020).

the reporting of suspicious transactions, should be paid attention to, while Notice No 2 of the MAS from 2015 states the obligations to keep respective records in relation to the AML/CFT issues in Section 11<sup>45</sup>. However, as stated in the Consultation paper, in 5.3<sup>46</sup>, MAS will be obliged to issue a new notice related to this area together with guidelines owing to the repealed PSOA to which the former guidelines were related. But there is still the question as to whether this could be achieved over the first quarter of 2020. Nevertheless, in Sec. 23.1. of the Frequently Asked Questions for the PSA<sup>47</sup>, it is stated that the AML/CFT obligations under the PSA will not differ much from the obligations set by the MCRBA or the PSOA.

For the purpose of the protection of client funds (e.g. potential insolvency), PSA requires a certain form of security. For the SPI, it states the obligation of a minimum capital of SGD 100,000, while for the MPI, minimum capital requirements are increased to the value of SGD 250,000<sup>48</sup>. Furthermore, Article 22(2) states the obligation of deposited capital of the MPI (but not required for the SPI) for the purpose of protection against any potential suspension of licence or its expiration.

In this way, the legislative body has taken action against the insufficiencies of the former PSOA, when the SVF institute was used for the purpose of payment institutions that found sophisticated systems to keep issued e-money below the limit of SGD 30 million, while no specific requirement of minimum capital arose. Thus, the SVF institution has become popular as a cheaper substitute for e-money issuers, thus evading the original purpose of the act, counting on the use of this form in particular for public interests in Singapore.

For the purpose of securing financial system stability in Singapore, MAS plans to limit the institutions further. As the supporting document<sup>49</sup> of the MAS for the frequently asked questions related to the PSA states, the reason is the worries about the potential higher frequency of bank

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<sup>45</sup> *Notice PSOA-N02 to Holders of Stored Value Facilities on Prevention of Money Laundering and Countering the Financing of Terrorism*, MAS, Singapore, 2019, [https://www.mas.gov.sg/regulation/notices/notice-psoa-n02\\_](https://www.mas.gov.sg/regulation/notices/notice-psoa-n02_) (access on-line: 16.04.2020).

<sup>46</sup> *Consultation Paper on the Proposed Payment Services Regulations*, MAS, Singapore, 2019, <https://www.mas.gov.sg/publications/consultations/2019/consultation-paper-on-proposed-payment-services-regulations> (access on-line: 16.04.2020).

<sup>47</sup> *Frequently asked questions (FAQs) on the Payment Services Act (PS Act)*, MAS, Singapore, 2019, <https://www.mas.gov.sg/-/media/MAS/FAQ/Payment-Services-Act-FAQ-4-October-2019.pdf> (access on-line: 16.04.2020).

<sup>48</sup> Exact specification of amounts can be found in the Schedule B to the PSA in Article 8.

<sup>49</sup> *Frequently asked questions (FAQs) on the Payment Services Act (PS Act)*, MAS, Singapore, 2019, <https://www.mas.gov.sg/-/media/MAS/FAQ/Payment-Services-Act-FAQ-4-October-2019.pdf> (access on-line: 16.04.2020).

deposits to be exchanged for non-bank e-money, thus increasing the risk to the banking system as a stabilizing element of the financial system when the bank flow is moved away to non-banking institutions. For this purpose, the limit of held money per one account is set to SGD 5,000 and the transaction limit is set for SGD 30,000, and while we may expect these limits to be specified further in additional documentation as at the time of writing, this issue was not mentioned in any other document of the authorities or the MAS.

Naturally, questions arise in relation to the time period as the only source is the interpretation summary, whose binding nature is, however, accepted within the Singaporean “soft law.”

## **5. Conclusion**

A new regulation, reforming the original PSOA in the form of bringing in new licences defined in the PSA, has brought an important new element into the Singaporean payments industry. Even at the moment of writing this article, we can see significant interest on the part of many payment institutions in setting up another entity in Singapore. For example, at the ICE conference in London, held from 4 February to 6 February 2020, from the 16 payment providers we interviewed, 7 mentioned their interest in setting up an additional entity in Singapore and 3 of them had already started preparation for application for the licence.

This development is natural as Singapore maintains a high reputation, thus helping such institutions in their business development, as on one hand, it remains a very pro-business jurisdiction, and on the other hand, it maintains sufficiently strict regulation and supervision over the entities registered or licensed there.

Nevertheless, the question remains, how is the MAS going to face the higher number of new applications, including both former SVFs transforming into new licensed companies under the PSA and facing probably a more tolerant approach from the MAS owing to the experiences with their activities, as well as newly established entities, where I see the main slowing element in a form of bank account opening even before the submission of application to the supervisory body.

The objective of my article was to summarize the relevant legal requirements for newly licensed entities, thus meeting the objective and confirming my hypothesis, as the new regulation brings a more comprehensive system and a more functional licensing system for e-money institutions than the former PSOA. Together with the elimination of the previously set limit and

exact limitation of licensed activities, higher transparency should be achieved, when the MAS should be able to supervise real compliance that was difficult under the previous regulation. This free space in the former regulation provided the possibility of utilizing SVFs as an alternative to a payments institution while the original objective of the act did not consider this possibility and thus, there was a tendency to misuse this institute for a different purpose.

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